HIGH COURT OF UTTARANCHAL AT- NAINITAL.

(1). Writ Petition No. 1283(S/S)2004

Guru Prasad S/o late Sri Phool Chand,
Gram Panchayat Vikas Adhikari,
Gram Panchayat East Hopetown,
Sahaspur Block, Dehradun. .....Petitioner.

Vs.

1. State of Uttaranchal, through Secretary Panchayat Raj,
   Secretariat, Dehradun.
2. District Magistrate, Dehradun,
3. Zila Pnachayat Raj Vikas Adhikari, Dehradun,
4. Block Development Officer, Sahaspur Block, Dehradun,
5. Sri Matwar Bisht, Gram Panchayat Vikas Adhikari,
   Arkedia Grant, Dehradun,
6. Sri Bal Swaroop, Gram Panchayat Vikas Adhikari,
   Attak Farm, Dehradun. .....Respondent.

Sri B.P. Nautiyal, learned counsel for the petitioner,
Learned Standing Counsel for the respondents.

AND

(2). Writ Petition No. 1297(S/S)2004

Bal Swaroop S/o Sri Jammi Lal,
R/o Village & Post Office Paudha,
Prem Nagar,
District Dehradun. .....Petitioner.

Vs.

1. State of Uttaranchal, through Secretary Panchayat Raj,
   Civil Secretariat, Dehradun.
2. District Magistrate, Dehradun,
3. District Panchayat Raj Officer, Dehradun,
4. Block Development Officer, Sahaspur,
   Dehradun. .....Respondent.

Sri RP Nautiyal, learned counsel for the petitioner,
Learned Stanidng Counsel for the respondent.

Hon'ble M.M. Ghildiyal, J.

Hard Sri B.P. Nautiyal, Adv. & Sri R.P. Nautiyal, Adv. for the petitioners and learned Standing Counsel for the respondents.

There evolves the similar controversy in both the writ petitions hence, both the writ petitions are being decided by a common judgment.

Both the abovementioned writ petitions have been filed challenging the order dated 20.10.2004 passed by the District

Panchayat Raj Officer, Dehradun by which Sri Bal Swaroop, the petitioner in w.p. no. 1297(ss)04 has been allotted Arkedia Grant and one Sri Matwar Singh Bisht was allotted East Hope Town and Sri Guru Prasad, the petitioner in w.p. no. 1283(ss)04 was allotted Attak Farm.

It is not disputed by the parties that the competent authority for transferring the employees, like the petitioners, is the District magistrate of the concerned district. In the order dated 20.10.2004 it has been specifically mentioned that the part modification in the order is being issued after obtaining approval from the District Magistrate, Dehradun.

On 16.09.2004 an order was passed by the Block Development Officer, Sahaspur (Dehradun) by which Sri Bal Swaroop was transferred from East Hope Town to Attak Farm, Sri Guru Prasad was transferred from Natthuwala (Pelio) to East Hope Town and Sri Matwar Singh Bisht who was earlier working at Arkedia Grant was directed to remain at Arkedia Grant. This order was passed subject to the approval of District Magistrate.

Neither the counsel for the petitioners nor the learned Standing Counsel could show that this order dated 16.09.2004 was ever approved by the District Magistrate. The order itself says that the order is being passed subject to the approval of the District Magistrate and since no approval was granted by the District Magistrate, this order could not have been implemented.

Again on 06.10.2004, the Block Development Officer has passed order by which Sri Bal Swaroop was directed to join at East Hope Town and Sri Guru Prasad was directed to take charge at Attak Farm. This order too was passed to be implemented after the approval of the District Magistrate. Neither perusal of the record reveals nor the parties could show as to whether this order was ever approved by the District Magistrate. Again on 16.10.2004, the Block Development

Officer, Sahaspur, Dehradun passed another order by which Sri Bal Swaroop was directed to take charge at Attak Farm and Sri Guru Prasad was directed to join at East Hope Town. In this order the Block Development Officer has mentioned that the order dated 16.10.2004 was not approved by the District Magistrate, however from the perusal of the record it is also not clear as to whether this order was ever approved by the District Magistrate or not.

On 20.10.2004, another order was passed by the District Panchayat Raj Officer, Dehradun directing Sri Bal Swaroop to join at Arkedia Grant and Sri Guru Prasad to join at Attak Farm. So far Sri Matwar Singh Bisht is concerned, as he was working at Arkedia Grant prior to the passing of the order dated 16.09.2004, he was directed to take charge at East Hope Town. It is the order impugned, which is under challenge in both the writ petitions.

The order dated 20.10.2004 was stayed by this Court on 17.11.2004 in writ petition no. 1283(ss)04 and this very order was also stayed on 18.11.2004 in writ petition no. 1297(ss)04.

Counter affidavits have been filed in both the writ petitions.

A Civil Miscellaneous Application no. 1017/05 was filed in writ petition no. 1297(ss)04 for clarification of the interim orders passed by this Court on 17.11.2004 and 18.11.2004 respectively in these writ petitions. In para no. 5 of this application, the respondents have submitted that due to the interim order granted by this Court Sri Bal Swaroop and Sri Guru Prasad are presently working against the single post of Gram Panchayat Vikas Adhikari, East Hope Town.

As already stated above, neither the order dated 16.09.2004 nor the order dated 06.10.2004 was approved by the District magistrate. Even order dated 16.10.2004 was not approved by the District Magistrate. It is the only order dated 20.10.2004 which has been approved by the District Magistrate

and, as such, only this order dated 20.10.2004 can be implemented, if not stayed by this Court. But since this order has already been stayed by this Court, hence Sri Bal Swaroop, Sri Guru Prasad and Sri Matwar Singh Bisht should have been permitted to work at the respective places where they were working prior to the order dated 16.10.2004, therefore, there remains no question involve in regard to the working of the petitioners against a single post.

Learned Standing Counsel has filed counter affidavits, in which it has been submitted that the District Magistrate is the competent authority to transfer to petitioners. The transfer orders dated 16.09.2004, 06.10.2004 and 16.10.2004 were passed by the Authority without having jurisdiction.

In view of the circumstances narrated above, I find no infirmity in the transfer order passed by the District Panchayat Raj Officer, Dehradun on 20.10.2004 as this order has been passed after approval of the District Magistrare, Dehradun. Consequently, both the writ petitions are dismissed. No order as to costs.

Let a copy of this order be placed in the connected writ petition.

(M.M. Ghildiyal, J.)

March 28, 2005:
NCM: